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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIRONORI MIZUGUCHI

Appeal 2009-004580
Application 09/924,723
Technology Center 2600

Decided: September 24, 2009

Before JOHN C. MARTIN, KARL D. EASTHOM, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

WHITEHEAD, JR., *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-42. *See* App. Br. 5. We have jurisdiction under 35 U.S.C. § 6(b) (2002).¹ We affirm.

STATEMENT OF THE CASE

Appellant invented a reverse-link transmission power control system and method that controls reverse-link transmission power in a digital mobile communication system.²

Claim 1, which further illustrates the invention, follow:

1. A base station of a mobile communication system comprising:
a communication monitor circuit for detecting quality deterioration of radio communication with mobile stations, wherein:
said communication monitor circuit comprises:
a monitor unit for monitoring a communication state of said radio communication;
a judging unit coupled to said monitor unit for judging whether said communication state monitored by said monitor unit is worse than a predetermined state; and
a notifying unit coupled to said judging unit for notifying an external circuit of said quality deterioration when said judging unit judges that said communication state is worse than said predetermined state.

The Rejection

¹ An oral hearing for this appeal was held on September 10, 2009.

² *See generally* App. Br. 7.

The Examiner relies upon the following prior art reference as evidence of unpatentability:

Itoh	US 6,418,321 B1	Jul. 9, 2002
Larijani	US 6,603,746 B1	Aug. 5, 2003

Claims 1-42 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Larijani and Itoh (Ans. 3-33).

Rather than repeat the arguments of Appellant or the Examiner, we refer to the Briefs and the Answer for their respective details. In this decision, we have considered only those arguments actually made by Appellant. Arguments which Appellant could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008).

Obviousness Rejection of Claims 1-42

Appellant argues that the combination of Larijani and Itoh fails to disclose monitoring the quality of a *plurality of individual communications between a plurality of mobile units and the base station* and making a judgment based upon the state of communication of all of the plurality of communications (App. Br. 24). The Examiner takes the position that the claims do not recite a *plurality of individual communications* (Ans. 46). The Examiner argues that it would be reasonable to interpret the claims as monitoring a broadcast from the base station to multiple mobile stations. *Id.*

ISSUES

Has Appellant shown that the Examiner erred in finding that the combination of Larijani and Itoh discloses a base station having circuitry for detecting quality deterioration of radio communication between mobile stations and the base station?

FINDINGS OF FACT

1. Larijani discloses that forward-link CDMA signals transmitted by a base station to various mobile units in the cell are immune to interference from signals destined for other mobile units (“Background of the Invention,” col. 1, ll. 47-55).
2. Larijani discloses that closed-loop power control consists of a destination (base station or mobile unit) measuring the signal-to-interference ratio of a signal received from a source and comparing it with a predetermined target value. The power transmitted by the source may be adjusted based upon the comparison (“Background of the Invention,” col. 1, ll. 63-67; col. 2, ll. 1-5).

PRINCIPLES OF LAW

“[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). “Moreover, limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so

doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). If the Examiner's burden is met, the burden then shifts to the Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

Claims 1, 4, 6-9, 12, 14-17, 20, 22, 25, 27-30, 33 and 35-42

Appellant argues that the claimed invention requires that the base station monitors the communication state of a *plurality* of mobile stations (App. Br. 24). Claim 1 has a base station comprising of a *communication monitor circuit for detecting quality deterioration of radio communication with mobile stations*. Therefore, the Appellant's argument is persuasive. As explained below, Larijani discloses that the claimed configuration between the base station and the mobile stations was well known in the art (FF 1-2).

Appellant further reasons that because claimed invention requires that the base station monitors the communication state of a *plurality* of mobile stations, the claimed *communication state of said radio communication* refers to the *quality of a group of individual communications* between the mobile stations and the base station (App. Br. 24; Reply Br. 4-5). This argument is not commensurate with the scope of the claims. The claims simply do not address the *quality of a group of individual communications*. Instead, claim 1 is broad enough to read on checking the quality of communications with the plural mobile stations individually. Therefore we do not find the Appellant's argument to be persuasive.

Appellant further reasons that Larijani fails to disclose monitoring the quality of a *plurality of individual communications between a plurality of mobiles [sic] units and the base station and making a judgment based upon the state of communication of all a plurality of communications* (App. Br. 24; Reply Br. 4-5). This argument is not commensurate with the scope of the claims. The claims do not address a plurality of individual communications nor do they address making a judgment based on the state of all a plurality of communications. Therefore we do not find the Appellant's argument to be persuasive.

Once the Examiner has satisfied the burden of presenting a prima facie case of obviousness, the burden then shifts to Appellant to present evidence and/or arguments that persuasively rebut the Examiner's prima facie case. *See In re Oetiker*, 977 at 1445. Since Appellant did not particularly point out errors in the Examiner's reasoning to persuasively rebut the Examiner's prima facie case of obviousness, the rejection of claims 1, 4, 6-9, 12, 14-17, 20, 22, 25, 27-30, 33 and 35-42 is sustained.

Claims 2, 3, 5, 10, 11, 13, 18, 19, 21, 23, 24, 26, 31, 32 and 34

Although the Appellant argues that the dependent claims should be *allowable* based upon their dependence upon the independent claims, the Appellant presents additional arguments as to why the Examiner's obviousness rejection should not be sustained (App. Br. 25). The Appellant argues that the Larijani and Itoh combination fails to disclose *monitoring or measuring the total interference electric power of a plurality of communications* in regard to claims 2, 5, 10, 13, 18, 21, 23, 26, 31 and 34. *Id.* The Appellant further argues that the Larijani and Itoh combination fails

to disclose the *monitoring or measuring signal to noise ratios of a plurality of communications* in regard to claims 3, 11, 19, 24 and 32. *Id.* The Appellant also argues that these references fail to disclose monitoring TPC bit signals, as recited in claims 4, 12, 20, 25, and 33 (App. Br. 26). Although the Examiner relied upon the combined teachings of Larijani and Itoh, Appellant failed to address the errors of the obviousness rejection based upon the combination of the references with any specificity. Appellant does not specifically address the Examiner's obviousness rejection other than asserting that the references do not disclose aforementioned claim limitations. Such conclusory assertions without supporting explanation or analysis particularly pointing out errors in the Examiner's reasoning fall well short of persuasively rebutting the Examiner's prima facie case of obviousness. *See Oetiker*, 977 F.2d at 1445. We therefore sustain the Examiner's rejection of claims 2, 3, 5, 10, 11, 13, 18, 19, 21, 23, 24, 26, 31, 32 and 34.

CONCLUSION

Appellant has not shown that the Examiner erred in finding that the combination of Larijani and Itoh discloses a base station having circuitry for detecting quality deterioration of radio communication between mobile stations and the base station.

ORDER

We will sustain the Examiner's decision rejecting claims 1-42.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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